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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,612	12/05/2001	Geoffrey Hamilton White	PAT-1412	6605
7590	09/21/2004		EXAMINER	
Raymond Sun 12420 Woodhall Way Tustin, CA 92782			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	
			DATE MAILED: 09/21/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/010,612	WHITE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Michael Thaler	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12, 14-17 and 20-33 is/are pending in the application.
- 4a) Of the above claim(s) 1-12, 14, 17, 20 and 21 is/are withdrawn from consideration.
- 5) Claim(s) 15 and 16 is/are allowed.
- 6) Claim(s) 22-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3731

The disclosure is objected to because of the following informalities: The sentence on page 7, lines 7-10 appears to be inconsistent with the drawings. It is not seen how the angle A1 can decrease upon expansion of the stent since the angle appears to be near zero in the compressed state shown in figure 3, wherein the ends of connecting member 48 are directly across from each other, although the connecting member is curved. It is not seen how the embodiment of figures 16-17 functions since the angle of connecting member 48h relative to the longitudinal axis of the stent increases during stent expansion which would shorten rather than lengthen its longitudinal dimension during stent expansion assuming the length of the connecting member remains constant. The specification nowhere indicates that the length of the connecting members changes. Appropriate correction is required.

Claims 1-12, 14, 17, 20 and 21 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was constructively made by original presentation.

Claims 22-33 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Roubin et al. (5,827,321). Roubin et al. show a

Art Unit: 3731

plurality of annular elements, each annular element having a plurality of alternating struts 42, 44 and apices 46 wherein each annular element has a longitudinal dimension which is smaller in the expanded state than in the compressed state, and a plurality of connector members 84, 86 (figure 8) connecting the apices 46 of adjacent annular elements, each connecting member (each of 84 and 86) having a longitudinal dimension which is larger in the expanded state than in the compressed state since the angle between it and the longitudinal axis of the stent decreases as the stent expands, the connecting member (each of 84 and 86) being straight (col. 6, lines 47-50), wherein the length of the stent remains the same when the annular elements are in both the compressed and expanded states (col. 5, lines 1-4). Alternatively, it would have been obvious that each connecting member (each of 84 and 86) has a longitudinal dimension which is larger in the expanded state than in the compressed state since the angle between it and the longitudinal axis of the stent decreases as the stent expands.

As to claim 32, the claimed "plurality of connecting members are considered to be members 84, all of which are oriented at the same angle. As to claim 33, Roubin et al. disclose a plurality of rows of connecting members (wherein one row includes members 84 and another row includes members 86) wherein the connecting

Art Unit: 3731

members in one row are oriented in a different direction with respect to the connecting members in an adjacent row.

Claims 15 and 16 are allowed.

Applicant's arguments filed June 21, 2004 have been fully considered but they are not persuasive. Each connecting member 84, 86 of Roubin et al. is straight as broadly claimed. The proposed amendment of inserting the word "entire" before "connecting member" would still not patentably distinguish the claim from Roubin et al. since the entire connecting member 84 is straight and the entire connecting member 86 is straight. It should be noted that although it is not seen how the embodiment of figures 16-17 functions (as indicated above), it is clear how the embodiment of figures 10-11 functions and claims 16 and 17 read on both embodiments.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3731

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
9/16/04



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731